

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1587 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HINABEN (DAXABEN) JAYANTILAL MODI

Versus

HITENDRA BABULAL MOOH

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Appearance:

MR UI VYAS for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 22/12/97

ORAL JUDGEMENT (Per Patel, J.)

1. The petitioner has approached this Court praying for issuance of a writ of Habeas Corpus directing her husband, the respondent No.1 to bring her child, respondent No.2, before the Court and to handover to her the custody of the minor child.

2. Petitioner and the respondent No.1 are wife and husband, and were happily staying together, but for some reasons, it appears that dispute arose. As per the averments made in the petition, respondent No.1 demanded a sum of Rs.1,00,000/- from the father of the petitioner to construct a house, and on denial, she was treated inhumanly. As averred, it is at this stage and background, the petitioner was dragged out from her matrimonial house and the custody of the minor child has not been handed over to her since thereafter. The child is aged about One and a half year, and it is necessary that the child should be handed over to the petitioner, the Mother.

3. From the record it appears that the petitioner submitted an application being application No. 314 of 1997 in the Court of Judicial Magistrate, First Class, at Gandhinagar under section 97 of the Criminal Procedure Code, pointing out that on 12.6.1997, the respondent No.1 made a demand of Rs.1,00,000/- and on denial, she was driven out and since then, the respondent No.2 minor child is in the custody of the respondent No.1. Considering the facts and circumstances of the case, on 19.11.1997, learned Magistrate rejected the application. It is observed in the order that the applicant mother was suffering on account of Jaundice, and therefore, there was no question of breast-feeding the minor child, who was being looked after by one Niranjana, sister of the respondent No.1. It further appears that the applicant alone went to the said Niranjana for custody of Sachin and at that time the said Niranjana asked the petitioner as to why she came alone, and the petitioner left the house of Niranjana. It was pointed out before the learned Magistrate that there was no difficulty in maintaining the said child. Considering the facts, the application came to be rejected by the learned Magistrate. Against the said order of rejection, a Revision Application, being No. 31/97, came to be preferred before the learned Additional Sessions Judge, Gandhinagar on 28.11.1997. It appears that the learned Additional Sessions Judge issued urgent notice on opponent on 28.11.1997, returnable on 29.11.1997. What happened before the learned Additional Sessions Judge on 29.11.1997 is not reflected either in the order of the learned Additional Sessions Judge or in the present application, but the copy of the order produced in this proceedings indicates only that the said application was not pressed and, therefore, it was disposed of accordingly. Thus, the validity of the order passed by the learned Judicial Magistrate, First Class, Gandhinagar

is not in question.

4. As stated in paragraph 6 of this application, it appears that the petitioner has also preferred another proceedings under the Guardians and Wards Act in the Court of learned Assistant Judge, Gandhinagar, being Civil Suit No. 27/97. It also appears that an interim application for custody is also preferred in the aforesaid Civil Suit No. 27/97. In the present application, it is not stated as on what date the said suit and applications were filed or on what date the respondents appeared and as to why the interim application is not being decided, but only a vague averment is made that interim application is not decided till today. There is nothing on record to show as to who is responsible for the delay. We are told that now the matter is fixed for hearing before the learned Judge on 26.12.1997.

5. The petitioner is approaching two Forums simultaneously; Parallel proceedings ordinarily should not be entertained. When the matter in which the same question arises is fixed before the lower Court after about four days, we do not find any reason to entertain this application because even if we issue process in this matter, it will take some time for service of process. We are, therefore, of the view that ends of justice would be met with if the court below is directed to dispose of the application for custody of the minor child on 26.12.1997 itself. We, therefore, direct the Court taking up the interim application for custody in the aforesaid Civil Suit No. 27/97 to decide on merits the application on 26.12.1997 itself, without being influenced by the fact that this Court has rejected this application.

6. At the request of learned advocate for the petitioner, we direct the Registry to send the copy of this order forthwith to the Assistant Judge, Gandhinagar.

7. This application stands rejected with the aforesaid directions.

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